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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 ROGER SOTO,

12 Plaintiff,

13 v.

14 UNITED AIRLINES, INC.,

15 Defendant.  
16

No. 2:23-cv-02148-DJC-JDP

ORDER DENYING MOTION TO DISMISS  
AND GRANTING TRANSFER MOTION

17  
18 Plaintiff Roger Soto brings this case against Defendant United Airlines, Inc. for  
19 assault and wrongful termination based on Plaintiff's refusal to receive a COVID-19  
20 vaccine because of his sincerely held religious beliefs. Defendant has filed a motion  
21 asking that the Court dismiss the case for failure to state a claim or for improper  
22 venue, and, in the alternative, asking for the case to be transferred to Chicago in the  
23 Northern District of Illinois, where Defendant is headquartered. For the reasons set  
24 forth below, the Court grants in part and denies in part Defendant's Motion to Dismiss  
25 or in the Alternative to Transfer Venue (ECF No. 9). Specifically, the Court finds that  
26 the Court has personal jurisdiction over Defendant and will grant the motion to  
27 transfer venue and order that the case be transferred to the Northern District of  
28 California, where the alleged wrongful termination occurred. As a result, the Court

declines to reach the merits of the Rule 12(b)(6) motion to dismiss and instructs the parties to contact the assigned chambers in the transferee or receiving court for further direction regarding resolution of the motion.

## **BACKGROUND**

### **I. Factual Background**

Defendant “is a large, major American airline headquartered at Willis Tower in Chicago, Illinois.” (Compl. (ECF No. 1) ¶ 7.) Plaintiff is a flight attendant for Defendant who has worked in this position for 25 years. (See *id.* ¶¶ 6, 27.) Plaintiff lives in Calaveras County, California and is a devout traditional Roman Catholic. (See *id.* ¶¶ 6, 28.) As part of his faith, he believes that the sanctity of life is one of the most cherished commandments of his faith. (*Id.* ¶ 28.)

As alleged, this case revolves around Defendant’s decision on August 6, 2021 to become “the first airline carrier and one of the first large corporations to mandate a vaccine for COVID-19 as a condition of employment for its workforce.” (Compl. ¶ 13.) Plaintiff claims that Defendant “decided it would be first in the aviation industry to mandate the COVID-19 vaccine” and, as a result, “conducted a significant encroachment into the lives and health of every United employee by coercing employees to undertake an experimental medical procedure that affects their lives outside the workplace.” (*Id.* ¶ 15.) Defendant ultimately established September 27, 2021 as the deadline for employees to become fully vaccinated for COVID-19 by showing proof that he or she received two doses of the Pfizer or Moderna vaccine or one dose of the Johnson & Johnson vaccine. (See *id.* ¶¶ 16-17.) Employees who remained unvaccinated by that deadline would be terminated. (*Id.* ¶ 17.)

To effectuate this COVID-19 vaccine mandate, Defendant “implemented an accommodation request system in which Plaintiff was given the option to request accommodations based on religious beliefs or medical reasons via United’s Reasonable Accommodation Process.” (Compl. ¶ 18.) “Employees were not allowed

1 to seek both religious and medical accommodations . . . .” (*Id.*) Employees had until  
2 August 31, 2021 to submit an accommodation request. (See *id.* ¶ 19.)

3 Plaintiff submitted his accommodation request but complains that Defendant  
4 made no accommodation. Instead, Plaintiff alleges that he was wrongfully discharged  
5 because “those employees who sought [accommodations] would be placed on  
6 indefinite, unpaid leave starting October 2, 2021, with no benefits.” (Compl. ¶ 20.)  
7 According to Plaintiff, Defendant “never provided any ‘accommodated’ employee or  
8 Plaintiff with a date by which they could return to work; and stated this period of  
9 unpaid leave might last up to 72 months.” (*Id.* ¶ 21.) Moreover, “any employee whose  
10 accommodation request was denied [was required to] receive the vaccine by  
11 September 27, 2021, or be terminated.” (*Id.* ¶ 22.)

12 Plaintiff complains that his placement on unpaid leave amounted to wrongful  
13 termination because he refused to receive the vaccination based on his position that  
14 “[t]aking an injection of a vaccine that uses aborted fetal tissue in its use and/or  
15 development violates his strongly held religious beliefs, honoring the Fifth  
16 Commandment of ‘Thou Shalt Not Kill.’” (Compl. ¶ 29.) Plaintiff notes that, despite  
17 submitting his accommodation request and including a letter from his priest  
18 explaining his conflict of conscience with the COVID-19 vaccines, Defendant required  
19 additional support. (See *id.* ¶ 30.) This led to several emails and phone calls between  
20 Plaintiff and Defendant regarding Plaintiff’s beliefs and his support for those beliefs.  
21 (See *id.* ¶¶ 31–34.) Ultimately, Plaintiff was granted a religious exemption, but he was  
22 “placed [ ] on an unpaid, unprotected, and unelected leave of absence.” (*Id.* ¶ 35.)

23 As a result, Plaintiff alleges that he and his wife suffered harm because he lost  
24 his health insurance just after his wife “recently withstood a heart attack . . . .” (Compl.  
25 ¶ 38.) Plaintiff also alleges that “Defendant’s COVID-19 vaccine mandate caused  
26 Plaintiff to reasonably belief that Defendant was about to carry out the threat of  
27 harmful and offensive contact upon him, by way of forcing Plaintiff to inject an  
28 untested and potentially unsafe substance into his body.” (*Id.* ¶ 56.) Allegedly, the

1 vaccine requirement “was an unwelcome invasion of Plaintiff’s privacy and bodily  
2 integrity.” (*Id.* ¶ 57.)

## 3 **II. Procedural Background**

4 Plaintiff filed the Complaint in federal court on September 27, 2023. (See ECF  
5 No. 1.) Defendant filed the instant Motion to Dismiss on January 9, 2024. (See ECF  
6 No. 9; *also* Def.’s Mem. of P. and A. in Supp. of Mot. to Dismiss or in the Alternative to  
7 Transfer Venue (ECF No. 9-1) (“Motion” or “MTD”).) Plaintiff eventually filed his  
8 Opposition after the Court issued an Order to Show Cause. (See Pl.’s Mem. of Law in  
9 Opp’n to Def.’s MTD (ECF No. 16) (“Opposition” or “Opp’n”); *also* ECF Nos. 12, 17.)  
10 After several extensions, Defendant finally filed its Reply on May 3, 2024. (See Def.’s  
11 Reply in Supp. of MTD (ECF No. 25) (“Reply”).) The matter was submitted without oral  
12 argument and is now fully briefed.

## 13 **DISCUSSION**

### 14 **III. This Court Has Personal Jurisdiction Over Defendant**

#### 15 **A. Legal Standard Under Federal Rule of Civil Procedure 12(b)(2)**

16 Where a defendant moves to dismiss a complaint for lack of personal  
17 jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is  
18 appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir.  
19 2004). Where parties rely solely on affidavits, a plaintiff must make only a prima facie  
20 showing of jurisdictional facts through the submitted materials in order to avoid a  
21 defendant’s motion to dismiss. *See Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d  
22 1280, 1285 (9th Cir. 1977). In such cases, “[courts] only inquire into whether [the  
23 plaintiff’s] pleadings and affidavits make a prima facie showing of personal  
24 jurisdiction.” *Schwarzenegger*, 374 F.3d at 800. Although the plaintiff cannot “simply  
25 rest on the bare allegations of its complaint,” uncontroverted allegations in the  
26 complaint must be taken as true. *Id.* Conflicts between parties over statements  
27 contained in affidavits must be resolved in the plaintiff’s favor. *Id.*

## 1           **B.     Analysis**

2           In exercising personal jurisdiction, a federal district court is constrained by the  
3           Fourteenth Amendment’s Due Process Clause and the long-arm statute of the state in  
4           which it sits. *Impossible Foods Inc. v. Impossible X LLC*, 80 F.4th 1079, 1086 (9th Cir.  
5           2023). Because California’s long-arm jurisdictional statute is coextensive with federal  
6           due process requirements, the jurisdictional analysis under state law and federal due  
7           process are the same. *Schwarzenegger*, 374 F.3d at 800-01.

8           For a court to exercise personal jurisdiction over a nonresident defendant, that  
9           defendant must have at least “minimum contacts” with the relevant forum such that  
10          the exercise of jurisdiction “does not offend traditional notions of fair play and  
11          substantial justice.” *Schwarzenegger*, 374 F.3d at 801 (quoting *Int’l Shoe Co. v. State*  
12          *of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945))  
13          (internal quotation marks and citation omitted in *Schwarzenegger*). Given this focus  
14          on the forum state contacts, jurisdiction comes in two forms: general jurisdiction and  
15          specific jurisdiction. *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th 1154, 1161 (9th  
16          Cir. 2023) (citing *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358  
17          (2021)), *cert. denied*, 144 S. Ct. 826 (2024). As explained below, while the Court  
18          agrees with Defendant that it does not have general jurisdiction over it (see MTD at  
19          11-12; Reply at 2), the Court concludes that it does have specific jurisdiction over  
20          Defendant because of its extensive contacts in California, including hubs located at  
21          Los Angeles International Airport and San Francisco International Airport. (See Decl.  
22          of Kirk Limacher in Supp. of Def.’s MTD (ECF No. 9-2) ¶ 12 (“Limacher Decl.”).)

### 23                   **1.     The Court Lacks General Jurisdiction Over Defendant**

24          General jurisdiction – or “all-purpose” jurisdiction – comes into play when a  
25          defendant is “essentially at home” in the forum state. *Davis*, 71 F.4th at 1161 (quoting  
26          *Ford Motor Co.*, 592 U.S. at 358). For corporations, this type of extensive contact  
27          generally means the company’s place of incorporation and its principal place of  
28

1 business. *Id.* Such jurisdiction extends over “any and all claims” against the defendant  
 2 concerning “events and conduct anywhere in the world.” *Id.*

3 Plaintiff alleges that Defendant is “headquartered at Willis Tower in Chicago,  
 4 Illinois.” (Compl. ¶ 7; see also Limacher Decl. ¶ 3 (same).) Defendant also submitted  
 5 the Declaration of Kirk Limacher, the Vice President of Flight Operations Planning and  
 6 Development in Chicago, Illinois, who stated that Defendant is incorporated in  
 7 Delaware. (See Limacher Decl. ¶ 3.) Thus, Plaintiff is domiciled or “at home” in Illinois  
 8 and Delaware but not in California. Therefore, the Court may only exercise specific  
 9 jurisdiction over Defendant. See *Impossible Foods Inc.*, 80 F.4th at 1086.

## 10 **2. The Court Has Specific Jurisdiction Over Defendant**

11 Specific jurisdiction “covers defendants less intimately connected with a State,  
 12 but only as to a narrower class of claims.” *Impossible Foods Inc.*, 80 F.4th at 1086  
 13 (quoting *Ford Motor Co.*, 592 U.S. at 359). “Distilling Supreme Court precedent, [the  
 14 Ninth Circuit has] articulated three requirements for establishing specific jurisdiction  
 15 over a non-resident defendant:”

16 (1) the defendant must either purposefully direct his  
 17 activities toward the forum or purposefully avail himself of  
 18 the privileges of conducting activities in the forum; (2) the  
 19 claim must be one which arises out of or relates to the  
 defendant’s forum-related activities; and (3) the exercise of  
 jurisdiction must comport with fair play and substantial  
 justice, i.e., it must be reasonable.

20 *Id.* (quoting *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir.  
 21 2017)). The plaintiff bears the burden on the first two steps. See *id.* If the first two  
 22 steps are satisfied, then the defendant “must come forward with a ‘compelling case’  
 23 that the exercise of jurisdiction would not be reasonable.” *Ayla, LLC v. Ayla Skin Pty.*  
 24 *Ltd.*, 11 F.4th 972, 979 (9th Cir. 2021).

### 25 **i. The Two Hubs Establish Specific Jurisdiction**

26 Under the first step of the three-part analysis, “to be subject to specific  
 27 jurisdiction the defendant must purposefully direct its activities toward the forum  
 28 state, purposefully avail itself of the privileges of conducting activities there, or

engage in ‘some combination thereof.’” *Impossible Foods Inc.*, 80 F.4th at 1088 (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (*en banc*) (*per curiam*)). Courts analyze a defendant’s contacts under the purposeful direction test or the purposeful availment test depending on the nature of the underlying claims. See *id.* (quoting *Ayla*, 11 F.4th at 979). “When a defendant’s conduct primarily occurs outside the forum state, [courts] generally apply the purposeful direction test and look to whether the defendant expressly aimed acts at the forum state knowing that they would harm the plaintiff there.” *Id.* (citing *Freestream Aircraft (Bermuda) Ltd. v. Aero L. Grp.*, 905 F.3d 597, 603–04 (9th Cir. 2018)). Purposeful availment, meanwhile, is satisfied when “the defendant has taken deliberate action within the forum state or . . . has created continuing obligations to forum residents.” *Id.* (quoting *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)). Thus, “[p]urposeful availment generally provides a more useful frame of analysis for claims sounding in contract, while purposeful direction is often the better approach for analyzing claims in tort.” *Id.* (quoting *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020)). Courts determine which test to apply claim-by-claim. See, e.g., *Grootenk v. Labrie Env’tl Grp., LLC*, No. 8:22-cv-01868-FWS-ADS, 2023 WL 5440299, at \*6 (C.D. Cal. July 20, 2023). See also *San Diego Cnty. Credit Union v. Citizens Equity First Credit Union*, 65 F.4th 1012, 1035 n.13 (9th Cir. 2023) (“Where – as here, “a plaintiff relies on specific jurisdiction, he must establish that jurisdiction is proper for ‘each claim asserted against a defendant.’”), *cert denied*, 144 S. Ct. 190 (2023).

Here, neither party addresses which test to apply, and “[a]lthough the distinction between purposeful availment and direction is often a useful and appropriate doctrinal table-setting device, ‘there’s no need to adhere to [this] iron-clad doctrinal dichotomy’ in every case.” *Impossible Foods Inc.*, 80 F.4th at 1089 (quoting *Davis*, 71 F.4th at 1162) (first alteration added). “At the end of the day, the purposeful direction and availment tests simply frame our inquiry into the defendant’s

1 'purposefulness' vis-à-vis the forum state, ensuring that defendants are not 'haled into  
 2 a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.'" *Id.*  
 3 (quoting *Global Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma*, 972  
 4 F.3d 1101, 1107 (9th Cir. 2020)). "And by that general metric," the Court "easily  
 5 conclude[s] . . . that [Defendant] directed its activities toward California and/or  
 6 purposefully availed itself of the benefits and privileges of California's laws." *Id.*

7 Under a purposeful direction analysis, courts apply the *Calder* "effects" test  
 8 which imposes three requirements, "the defendant allegedly [must] have (1)  
 9 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm  
 10 that the defendant knows is likely to be suffered in the forum state." *Yahoo! Inc.*, 433  
 11 F.3d at 1206 (quoting *Schwarzenegger*, 374 F.3d at 803). Here, Defendant  
 12 intentionally managed two "hubs" in California where Defendant intentionally  
 13 employed people and where Defendant intentionally enforced its vaccine mandate.  
 14 Compare with *Schwarzenegger*, 374 F.3d at 806 (determining that the intentional act  
 15 was placing the advertisement in a local newspaper); *Calder v. Jones*, 465 U.S. 783,  
 16 789 (1984) (finding that the researching, writing, editing, and publishing of the  
 17 allegedly libelous tabloid news article were the intentional acts). These intentional  
 18 acts were "expressly aimed" at California because managing hubs in California,  
 19 employing individuals in California, and enforcing the vaccine mandate in California  
 20 were "'event[s] within a sequence of activities designed to use California markets for  
 21 the defendant's benefit." *Schwarzenegger*, 374 F.3d at 807 (quoting *Sinatra v. Nat'l*  
 22 *Enquirer, Inc.*, 854 F.2d 1191, 1197 (9th Cir. 1988)). Finally, based on the two "hubs"  
 23 in California, more than any other state, there are more than sufficient instances of  
 24 Defendant enforcing the vaccine mandate on California employees for that state to  
 25 bear a jurisdictionally sufficient amount of harm. See *Yahoo! Inc.*, 433 F.3d at 1207.

26 Application of the purposeful availment test reaches the same result even more  
 27 straightforwardly. Under the purposeful availment test, the defendant "must have  
 28 'performed some type of affirmative conduct which allows or promotes the transaction



of business within the forum state.” *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (quoting *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990)). A showing that a defendant purposefully availed himself of the privilege of doing business in a forum state typically consists of evidence of the defendant's actions in the forum, such as executing or performing a contract there. *Schwarzenegger*, 374 F.3d at 802. Here, Defendant should not be surprised to be haled into a California court based on the two “hubs” it maintains in Los Angeles and San Francisco. See *Impossible Foods Inc.*, 80 F.4th at 1089 (quoting *Global Commodities*, 972 F.3d at 1107). Indeed, a Texas district court has found that it had specific jurisdiction over a similar case against Defendant regarding its COVID-19 vaccine mandate, and Texas only has *one* hub. See *Sambrano v. United Airlines, Inc.*, No. 4:21-cv-1074-P, 2021 WL 5178829, at \*5 (N.D. Tex. Nov. 8, 2021). At bottom, given Defendant’s commercial activity here, “it should have reasonably anticipated being brought into court in California.” *Sinatra*, 854 F.2d at 1197 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

## ii. The Case Relates to Plaintiff’s Employment

Under the second step, the plaintiff must still show that the claims or causes of action “arise out of or relate to the defendant’s contacts” with the state. See *Impossible Foods Inc.*, 80 F.4th at 1091 (quoting *Ford Motor Co.*, 592 U.S. at 359). In conducting this second step of the inquiry, courts “consider the extent of the defendant’s contacts with the forum and the degree to which the plaintiff’s suit is related to those contacts.” *Id.* (quoting *Yahoo! Inc.*, 433 F.3d at 1210).

Here, Defendant argues that “[w]hile Defendant offers flight services in California, the employment decisions and policies Plaintiff is challenging were adopted and implemented by Defendant at its corporate headquarters in Chicago, Illinois.” (MTD at 13 (citing Limacher Decl. ¶ 5).) But Plaintiff’s claims are no different than the plaintiffs complaining about the harm that arises from a known channel of distribution, like the website accessible to users in the forum state, the defamatory

newspaper distributed in New Hampshire, the libelous articles distributed in California, and the videos of sexual abuse published online that targeted a U.S. audience. See *Doe v. WebGroup Czech Republic, a.s.*, 93 F.4th 442, 457–58 (9th Cir. 2024) (collecting cases). Crucially, the Ninth Circuit has repeatedly held that “personal jurisdiction over a defendant may be proper where the defendant has committed an act which has effects in a state, because the defendant ‘purposefully directed’ its economic activity towards that state.” *Passantino v. Johnson & Johnson Consumer Prod., Inc.*, 212 F.3d 493, 505 (9th Cir. 2000). Such is the case here when Defendant enforced its vaccine mandate at the two hubs in California that target California’s businesses, employees, and markets. See *Franey v. Am. Battery Sols. Inc.*, No. 22-CV-03457-LB, 2022 WL 4280638, at \*10 (N.D. Cal. Sept. 15, 2022) (finding there was personal jurisdiction over defendants where the defendants’ “contacts with California resulted from the employment relationship, and the plaintiff’s claims arise out of the relationship.”).

As a result, the Court concludes that Plaintiff’s claims arise out of or relate to Defendant’s enforcement actions in California, specifically at the hub in San Francisco.

### iii. Exercising Personal Jurisdiction Over Defendant Would Not Be Unreasonable

“In evaluating the reasonableness of an exercise of personal jurisdiction, [courts] ‘use a seven-factor balancing test that weighs:’”

(1) the extent of the defendant's purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

*Doe*, 93 F.4th at 457–58 (quoting *Freestream Aircraft*, 905 F.3d at 607). If the plaintiff establishes the first two steps, “the burden then shifts to the defendant to ‘present a

1 compelling case' that the exercise of jurisdiction would not be reasonable.'" *Axiom*  
 2 *Foods*, 874 F.3d at 1068-69 (quoting *Schwarzenegger*, 374 F.3d at 802).

3 Defendant made no argument regarding the unreasonableness of the exercise  
 4 of personal jurisdiction at step three in its initial Motion. (See MTD at 12-14.) Instead,  
 5 Defendant argued that there were insufficient contacts and that those contacts did not  
 6 relate to California. As a result, because the Court found that Plaintiff met his burden  
 7 under the first two steps, Defendant has the burden to establish the unreasonableness  
 8 of the exercise of personal jurisdiction, but Defendant failed to make any argument  
 9 and has waived any argument. See *Axiom Foods*, 874 F.3d at 1068-69 (quoting  
 10 *Schwarzenegger*, 374 F.3d at 802); *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir.  
 11 2007); *Mitchell v. United States*, 971 F.3d 1081, 1084 n.4 (9th Cir. 2020). Accordingly,  
 12 the Court concludes that the exercise of jurisdiction would not be unreasonable.

13 Thus, the Court DENIES Defendant's Motion to Dismiss under Rule 12(b)(2).

#### 14 **IV. The Case Should Not be Dismissed Even Though Venue Is Wrong**

##### 15 **A. Legal Standard Under Federal Rule of Civil Procedure 12(b)(3)**

16 Rule 12(b)(3) states that a party may move to dismiss a case for "improper  
 17 venue." *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 55  
 18 (2013) ("*Atlantic Marine*"). Title 28, section 1406(a) of the United States Code states  
 19 that the "[d]istrict court of a district in which is filed a case laying venue in the wrong  
 20 division or district shall dismiss, or if it be in the interest of justice, transfer such case to  
 21 any district or division in which it could have been brought." These provisions  
 22 therefore authorize dismissal only when venue is "wrong" or "improper" in the forum  
 23 in which it was brought. *Atlantic Marine*, 571 U.S. at 55.

24 This question – whether venue is "wrong" or "improper" – is generally  
 25 governed by 28 U.S.C. § 1391 unless a more specific venue statute applies. See  
 26 *Atlantic Marine*, 571 U.S. at 55 and n.2. Section 1391 identifies three forums where  
 27 venue may lie: (1) a judicial district in which any defendant resides, if all defendants  
 28 are residents of the State in which the district is located; (2) a judicial district in which a

substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action. See 28 U.S.C. § 1391(b). When venue is challenged, the court must determine whether the case falls within one of the three categories set out in § 1391(b). *Atlantic Marine*, 571 U.S. at 56. If it does, venue is proper; if it does not, venue is improper, and the case must be dismissed or transferred under § 1406(a). *Id.*

A motion under Rule 12(b)(3) for improper venue functions much like other motions under Rule 12(b) in that the facts in the complaint are assumed true. See *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1139 (9th Cir. 2004) (collecting cases). When there are disputed facts, those facts are construed in favor of the plaintiff, and all reasonable inferences must be construed in their favor. See *id.* at 1138.

## **B. Analysis**

### **1. Venue Does Not Lie in the Eastern District of California**

Defendant argues that venue does not lie in the Eastern District of California because Defendant does not reside here and the relevant acts took place in Chicago, Illinois, located in the Northern District of Illinois, and in San Francisco International Airport, located in the Northern District of California. (See MTD at 14-15.) The Court agrees because the Eastern District is not a judicial district where (1) Defendant is domiciled or (2) where a substantial part of the events or omissions occurred. See 28 U.S.C. § 1391(b)(1)-(2).<sup>1</sup>

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<sup>1</sup> Defendant also argues that the more specific venue provisions under California's Fair Employment and Housing Act ("FEHA"), codified at California Government Code section 12965, apply regardless of how the cause of action is construed. (See MTD at 15-16 (citing *Brown v. Superior Ct.*, 37 Cal. 3d 477, 487 (1984)).) However, venue under the federal statutes is a federal question that depends on federal law. See *Leroy v. Great W. United Corp.*, 443 U.S. 173, 183 n.15 (1979) (citing Wright and Miller, *Federal Practice and Procedure Jurisdiction* § 3803); see also 17 Moore's Federal Practice - Civil § 110.01. Regardless, whether under FEHA's venue provisions or under the federal civil rights venue provisions, venue would lie not in the Eastern District of California, but in San Francisco in the Northern

1 Accordingly, venue does not properly lie in the Eastern District of California.

## 2 **2. Transfer to the Northern District of California is Appropriate**

3 Because the Court has determined that venue is not proper in the Eastern  
 4 District of California, the case must be dismissed or transferred under 28 U.S.C.  
 5 § 1406(a) if the Court determines that it is in the interest of justice to transfer the case  
 6 to any district in which it could have been brought. See *Atlantic Marine*, 571 U.S. at  
 7 56. The Ninth Circuit has taken “a broad view of when transfer is appropriate,  
 8 recognizing that ‘[n]ormally transfer will be in the interest of justice because normally  
 9 dismissal of an action that could be brought elsewhere is ‘time-consuming and justice-  
 10 defeating.’” *Amity Rubberized Pen Co. v. Mkt. Quest Grp. Inc.*, 793 F.3d 991, 996 (9th  
 11 Cir. 2015) (quoting *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990)). Courts “will  
 12 ‘ordinarily find transfer to be in the interest of justice where . . . the plaintiffs appear to  
 13 have been “unaware of or confused about the proper forum in which to file [their]  
 14 action.’” *Id.* (quoting *Munns v. Kerry*, 782 F.3d 402, 415 (9th Cir. 2015)) (alteration  
 15 added in *Munns*). Or “when the time period has elapsed to file in the appropriate  
 16 court.” *Id.* (citing *Kennecott Corp. v. U.S. Dist. Ct. for S. Dist. of California*, 873 F.2d  
 17 1292, 1293 (9th Cir. 1989)). “More often, however [courts] have simply found that  
 18 absent contravening considerations, another court’s exclusive jurisdiction makes  
 19 transfer appropriate.” *Id.* (collecting cases).

20 But transfer would not be in the interest of justice where the party “‘was aware  
 21 of the proper procedure for review’ but filed with a different court for a bad-faith  
 22 purpose, such as to circumvent an earlier order of dismissal.” *Amity Rubberized Pen*  
 23 *Co.*, 793 F.3d at 996 (citing *Puri v. Gonzales*, 464 F.3d 1038, 1043 (9th Cir. 2006)).  
 24 That is, “transfer will generally be in the interest of justice, unless it is apparent that the  
 25 matter to be transferred is frivolous or was filed in bad faith.” *Id.* This is a low bar and,  
 26 as prior cases illustrate, it will usually involve a very limited inquiry by the transferring

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27 District of California, where Defendant discharged Plaintiff, or in Chicago in the Northern District of  
 28 Illinois, where Defendant is headquartered. See Cal. Gov’t Code § 12965(a)(4).

1 court. *Id.* But this narrow scope is by design, as the interest of justice will rarely be  
2 served by one court engaging in a lengthy pre-transfer analysis, only ultimately to  
3 send the case to a new court that must start afresh. *Id.*

4 The Court concludes that the interests of justice would be better served by  
5 transferring the case to the Northern District of California because Defendant's  
6 policies "had effects in the state, and because California ha[s] an interest in providing  
7 a forum for the protection of its residents." *Passantino*, 212 F.3d at 505 (citing *Haisten*  
8 *v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1399 (9th Cir. 1986)).  
9 See also *id.* (rejecting a rule "that would allow venue only where the decision to  
10 commit the unlawful employment practice is made."). Even though Plaintiff filed in the  
11 wrong forum, it does not appear that he did so in bad faith, but, rather, because  
12 "Plaintiff lives within the Eastern District of California." (Opp'n at 10.)

13 As a result, the Court DENIES Defendant's Motion to Dismiss under Rule  
14 12(b)(3) and 28 U.S.C. § 1406(a) but GRANTS Defendant's Motion to Transfer.

15 **V. The Court Declines to Reach the Motion to Dismiss**

16 Because this Court has concluded that venue does not properly lie in the  
17 Eastern District of California and that the interests of justice would be served by  
18 transferring the matter to the Northern District of California, the Court declines to  
19 reach the merits of Defendant's Motion to Dismiss under Rule 12(b)(6), as courts  
20 routinely defer decision on the matter to the assigned judge upon transfer. See, e.g.,  
21 *Chaker v. Becerra*, No. 2:20-cv-1248-TLN-KJN-PS, 2021 WL 826167, at \*4 (E.D. Cal.  
22 Mar. 4, 2021) (citing *Fitbit, Inc. v. Koninklijke Philips N.V.*, 336 F.R.D. 574, 588 (N.D. Cal.  
23 2020)). Once the case has been transferred, the parties should contact the assigned  
24 chambers for further direction regarding resolution of the pending motion to dismiss.  
25 See *id.*

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**CONCLUSION**

For the reasons set forth above, the Court GRANTS in part and DENIES in part Defendant's Motion to Dismiss or in the Alternative to Transfer Venue (ECF No. 9). The Court GRANTS Defendant's Motion to Transfer Venue, transferring the matter to the Northern District of California. As a result, the Court declines to reach the merits of Defendant's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) after denying the motions to dismiss under Rules 12(b)(2) for lack of personal jurisdiction and 12(b)(3) for improper venue. Following transfer, the parties should contact the assigned chambers of the transferee or receiving court for further direction regarding resolution of the Rule 12(b)(6) motion to dismiss.

It is further ordered that all dates and deadlines set before the undersigned are hereby vacated. The Clerk of Court is directed to transfer documents to the Northern District of California and to close this case.

Dated: May 17, 2024

  
THE HONORABLE DANIEL J. CALABRETTA  
UNITED STATES DISTRICT JUDGE

DJC3 - Soto.23cv2148.Transfer.Mot.and.MTD